

Task Force to Supplement Keeping the Record by Electronic Means

June 25, 2019

12:00 p.m. to 4:00 p.m.

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 230

Present: Honorable Samuel A. Thumma; Mr. Dean Brault; Mr. Rolf Eckel; Honorable Pam Gates; Mr. Ed Gilligan; Mr. Bob James; Ms. Tracy Johnston; Mr. Jacob Jones; Ms. Sheila Polk; and Ms. Kate Roundy

Telephonic: None

Absent/Excused: None

Presenters/Guests: Ms. April Escobedo, Court Reporter; Ms. Leslie Foldy, Foldy Reporting; Ms. Robin Hillyard, County Supervisors Association; Ms. Marylynn LeMoine, Arizona Court Reporters Association; Ms. Cindy Lineburg, Court Reporter; Mr. Richard Plattner, Plattner Verderame, PC; and Ms. Kim Portik, Canyon State Reporting

Administrative Office of the Courts: Ms. Cathy Clarich, Ms. Amy Love, Ms. Marretta Mathes, Mr. Marcus Reinkensmeyer, and Ms. Diana Tovar

I. New Business

a. Call to Order, Welcome, Introductions, and Opening Remarks

The June 25, 2019 meeting of the Task Force to Supplement Keeping of the Record by Electronic Means was called to order by the Chair, Judge Samuel A. Thumma, at 12:02 p.m. The Chair asked for member and staff roll call and introductions. The Chair provided opening remarks related to the Task Force's purpose.

b. Adoption of Rules for Conducting Task Force Business

The Rules for Conducting Task Force Business were reviewed. A motion was made by Judge Pam Gates to adopt the rules, seconded by Ms. Sheila Polk. The motion passed unanimously.

c. Background Information

Mr. Marcus Reinkensmeyer provided background on court reporting as it relates to the 2019-2024 Arizona Supreme Court strategic agenda and the rationale for convening this task force. Mr. Reinkensmeyer indicated that the emphasis is on the need to supplement, not displace, court reporters.

Mr. Bob James discussed the chronic lack of court reporters. The state is currently in a 20 percent vacancy rate for court reporters in the Arizona superior courts. Five counties have no court reporter employment at all, with two counties using remote court reporting technology.

d. Administrative Order 2019-49 and Project Timeline

Judge Thumma reviewed the contents of Administrative Order 2019-49 and the charge of the Task Force. Judge Thumma reviewed the compressed timeline for this Task Force to complete its work. The Task Force's report and recommendations are due September 1, 2019. Judge Thumma indicated that he anticipates the Task Force will meet 2-3 times to complete its work by this deadline.

e. Member Ideas, Observations, Expectations, and Comments

Judge Thumma solicited feedback from members regarding what the Task Force can identify regarding issues, concerns, potential solutions, etc.

Mr. Jacob Jones pointed out that it would be helpful to ensure members of this Task Force are well-informed/educated on the matter so that thoughtful discussion and decisions can occur. He also pointed out that it is going to be important to hear what is happening in the smaller counties that is precipitating these concerns and indicated that flexibility is going to be key.

Mr. Rolf Eckel spoke to some of the concerns that smaller counties are facing. Yavapai County currently has 8 positions authorized, but only 5.5 positions filled. He indicated that Yavapai County is required to look at the calendar to triage the cases to determine priority in deciding where a court reporter should be placed.

Ms. Kate Roundy indicated that the newly passed legislation regarding licensing reciprocity may help the issues surrounding the shortage of court reporters. She also discussed a program that the Arizona Court Reporters Association (ACRA) used to have called "Request a Reporter" wherein the court administrator from each county could reach out to ACRA to let them know what they needed, and ACRA would send notification to all the court reporters in the state. This program is no longer in place. Ms. Roundy will follow up as to what happened with this program and why it is no longer in place. Ms. Roundy also commented that there seems to be a preference among some courts in using electronic recording in lieu of a court reporter.

Mr. James briefly discussed the remote court reporting program currently being used by Cochise and Santa Cruz Counties. Mr. Ed Gilligan indicated that in Cochise County, remote court reporting is being used out of necessity, not out of preference. He indicated there are challenges related to the quality of the experience, but one of the advantages over solely a recording is that there is a live interaction taking place when the reporter is actively taking the record from the remote location. He indicated that the preference would be to have a live court reporter present in the courtroom, but Cochise County has been unable to fill court reporter vacancies.

Mr. Gilligan indicated that cost is a factor as well in that there is not an ever-increasing source of revenue that can be pushed to every new project. As such, needs must be prioritized. Mr. Gilligan indicated that flexibility is important and reminded other members to be mindful of the financial limitations that exist. Mr. Reinkensmeyer inquired as to whether other counties are similarly situated. Mr. Gilligan indicated that the problems seem to be similar, except perhaps in Maricopa and Pima Counties, but that there are challenging situations around the state. Everyone is focused on budget, and from a county administration perspective, the effort is to find the most economical way to do things without sacrificing quality. The solutions must be cost-effective, they cannot be sustained.

Administrative Order 2019-49, which created the Task Force, directs that “[t]he Task Force shall submit its recommendations, together with recommended changes to statutes, rules and the Arizona Code of Judicial Administration, by September 1, 2019.” Given this directive, during the meeting, several Task Force members requested a list of the existing authorities related court reporting. This will be made available to members before the next meeting.

Judge Thumma will ask Mark Wilson, Certification and Licensing Division Director, to attend the next meeting to briefly discuss the licensing of court reporters.

Judge Thumma inquired as to whether we know what other states in the same situation have done. AOC staff will reach out to the National Center for State Courts (NCSC) to see if we can gather that information. Ms. Sheila Polk is a member of the National Network of District Attorneys and County Attorneys and will ask the association to send out an inquiry to see what type of responses we get back. Judge Pam Gates indicated that she would inquire similarly of her colleagues at a national conference she is attending next month.

Ms. Polk emphasized the need to ensure equal access when it comes to transcripts, the ability to review the record, etc. Judge Gates indicated that there are times when she will take pieces (30-45 seconds) of the FTR recording to play for the parties, jury, etc., in lieu of having a written transcription. She has also done this during jury deliberations when they ask to review witness testimony since transcription cannot be accomplished in such a short time window.

Judge Thumma inquired about the transcription process in Maricopa County. Mr. Richard Plattner indicated that this is a source of delay in Maricopa County. He also indicated that upon a public records request for the faulty transcripts slips, there have been no such slips turned in by the transcribing companies in the past three years. The transcription manual sets forth what would require a transcriptionist to submit one of these forms.

Mr. Dean Brault spoke to issues surrounding what is being picked up by the microphone, what should be on the record, and what should not be on the record.

Members discussed how transcription services are contracted throughout the state.

Ms. Amy Love indicated that it might be helpful for the group to have court reporter salaries by local jurisdiction. Mr. James will gather this information. Ms. Love also indicated that this group should be mindful of the storage that would accompany electronic recordings, records, documents, etc. Mr. James indicated that this is an area that is largely lacking in statewide consistency.

At the end of the meeting, and after having “volunteered” individuals to follow up on various items, Judge Thumma reviewed the “to-do” list and individuals responsible to undertake those items before the next meeting:

1. Circulate a list of statute provisions, rules of procedure, Arizona Code of Judicial Administration (AOC)
2. Information on Request a Reporter program (Ms. Roundy)
3. Ask that CLD Director Mark Wilson attend the next meeting to briefly discuss licensure (Chair)
4. What other states/jurisdictions may be doing (Chair (NCSC), Mr. Jones (counterparts), Judge Gates (counterparts))
5. Court reporter salaries (Mr. James)
6. Record retention schedule as it relates to retention timeframes when a transcript is prepared versus when it is not prepared (Judge Gates)

II. Call to The Public

The Chair made a call to the public. Ms. Cindy Lineburg spoke to efficiency and the factors that contribute to transcript production.

Ms. Leslie Foldy spoke to the Request a Reporter program and supports bringing the program back.

III. Adjournment

The Chair adjourned the meeting at 2:23 p.m.

Next Task Force Meeting Date:

August 1, 2019

10:00 a.m. – 2:00 p.m.

State Courts Building Conference Room 119 A/B
1501 W. Washington, Phoenix, AZ 85007